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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of SUSAN MARIE and
LEE GARTH HAWLEY.

SUSAN MARIE HAWLEY,

Appellant,

v.

JON CHARLES HAWLEY, as Personal
Representative, etc., et al.,

Respondents.

G046082

(Super. Ct. No. D246381)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Theodore R. Howard, Judge. Reversed and remanded with directions.

Law Offices of J. Cranor Richtor and J. Cranor Richter for Appellant.

Law Offices of Michael S. Magnuson and Michael S. Magnuson for
Respondents.

* * *

INTRODUCTION

The judgment dissolving the marriage of Susan Marie Hawley and Lee Garth Hawley found their residence to be community property, and ordered that Susan receive half the proceeds of the sale of the residence, less costs of sale and an existing encumbrance.¹ Although the judgment directed Susan and Lee to cooperate in listing and selling the residence “forthwith,” Lee continued to live in the residence for 21 more years. When he finally sold the residence, he did not provide any portion of the proceeds of the sale to Susan. The trial court denied Susan’s request for a writ of execution, because the judgment was not a “money judgment” as defined by Code of Civil Procedure section 680.270.²

We reverse the trial court’s order with directions. Although the judgment of dissolution of Susan and Lee’s marriage did not specify an amount of money owed by Lee to Susan, such an amount can be ascertained. As explained *post*, we direct the trial court on remand to conduct an evidentiary hearing to determine on what date Susan’s share of the community property should be calculated, to consider all legal and equitable arguments by both parties, to calculate Susan’s community property interest, and to issue the writ, if appropriate. For the reasons we explain, these issues should be considered by the trial court in the first instance.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Susan and Lee married in 1974, and separated in 1978. The marriage was dissolved by a judgment filed on October 10, 1985 (the 1985 judgment). The 1985

¹ To avoid confusion, we will use the first names of the parties to this case, and to the other cases cited in this opinion; we intend no disrespect. (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 390, fn. 1.)

² “‘Money judgment’ means that part of a judgment that requires the payment of money.” (Code Civ. Proc., § 680.270.)

judgment found that the family residence was community property, and awarded one-half of the net proceeds of the sale of the residence to Susan, and the other half to Lee.

In relevant part, the 1985 judgment provided the following regarding the residence: “The family residence located at 231 East Leadora, Glendora, California, shall be placed on the market for sale forthwith. Both parties shall cooperate in the listing, showing, closing and selling of said residence. Husband shall have exclusive use and possession of the residence until the close of escrow following its sale. Husband shall pay all encumbrances on said residence as same become due and payable, and shall hold Wife free and harmless therefrom. Husband shall maintain the family residence in a habitable condition. In the event Husband refuses to promptly list the residence for sale and cooperate in the sale thereof, Wife shall have exclusive control of the sale, said control to include procuring a listing agent, determining price, accepting or rejecting offers and making counter-offers. Husband’s consent need not be obtained as long as Wife has full control of the sale. [¶] At the time of the separation of the parties, the encumbrance on the house did not exceed the sum of \$30,000. Therefore, upon sale of the residence, Wife shall receive an amount equal to one-half of the selling price less costs of sale, less \$30,000. . . . In the event there is not enough equity in the family [residence] to satisfy the hereinabove described sum to which Wife is entitled, she shall be deemed to have a judgment against Husband for that sum less any amount which may be received by her pursuant to the sale. The court specifically reserves jurisdiction over the sale of the family residence and distribution of proceeds thereof.”

There is no evidence Susan ever exercised her right under the 1985 judgment to control a sale of the residence if Lee did not sell it “forthwith.” Lee continued to live in the residence for the next 21 years, finally selling it to a third party in October 2006. Lee did not provide any portion of the sales proceeds to Susan. Susan claimed she learned about the sale of the property in January 2009.

In March 2011, Susan filed a motion for an order directing issuance of a writ of execution.³ In her motion, Susan also asked the trial court to determine the amount due to her. The court denied the motion, and Susan filed a timely notice of appeal.⁴

DISCUSSION

Whether the 1985 judgment was a money judgment is a legal question we review de novo. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214.)

Susan does not dispute that the 1985 judgment does not specify a set amount of money to be paid to her by Lee. She contends, however, that “only the requirement that money be paid” is necessary to constitute a money judgment.

A money judgment is “that part of a judgment that requires the payment of money.” (Code Civ. Proc., § 680.270.) A money judgment “must be stated with certainty and should specify the amount.” (*Kittle v. Lang* (1951) 107 Cal.App.2d 604, 612; see *Wallace v. Wallace* (1931) 111 Cal.App. 500, 506; *D’Arcy v. D’Arcy* (1928) 89 Cal.App. 86, 92.)

“To be enforceable by execution, a money judgment must specify with certainty the amount for which it is rendered, or if the amount is not stated, it must be ascertainable from the record. Where a judgment, as originally drawn, fails either to fix a dollar amount for the amount of damages or to set forth the method by which the exact amount can be determined, the judgment is patently ineffective to allow the plaintiff to secure a writ of execution.” (30 Am.Jur.2d (2005) Executions and Enforcement of

³ Susan first filed a motion to amend the 1985 judgment to add a dollar amount, which was denied. The order denying that motion is not before this court on appeal.

⁴ Before the motion for an order directing issuance of a writ of execution was heard by the trial court, Lee died. Susan stipulated to permit Lee’s brothers, Jon Charles Hawley and Ronald Floyd Hawley, to substitute into the litigation as the personal representatives of the Estate of Lee Garth Hawley.

Judgments, § 56, p. 94, fns. omitted.) This general principle is the law of California. In *Harte v. County of Los Angeles* (1978) 87 Cal.App.3d 419, 420, the appellate court held that a judgment ordering a former employee be reinstated ““with full back pay, rights, privileges and benefits from the date of her wrongful reduction, including but not limited to seniority, retirement and pension benefits,”” was “patently . . . ineffective to allow plaintiff to secure a writ of execution.”

Susan relies on *Brown v. Brown* (1971) 22 Cal.App.3d 82, and *In re Marriage of Farner* (1989) 216 Cal.App.3d 1370, in support of her argument that the 1985 judgment is a money judgment. In *Brown v. Brown*, *supra*, 22 Cal.App.3d at page 83, Beverly Brown and Leon Brown’s divorce judgment provided that their stock in a particular company ““shall be divided equally.”” When Beverly sold the stock, she paid Leon less than one-tenth the money she received. (*Ibid.*) Beverly appealed from the trial court’s order to pay Leon a full one-half of the proceeds from the stock sale, arguing in part that “the original judgment contained no provision for enforcement of the order directing division of the . . . stock.” (*Ibid.*) The appellate court affirmed the trial court’s order, holding that “[e]very court has power to compel obedience to its judgments and orders [citations], and a court of equity retains inherent jurisdiction to oversee and enforce execution of its decrees.” (*Id.* at p. 84.)

In *In re Marriage of Farner*, *supra*, 216 Cal.App.3d at pages 1374-1375, the trial court issued an order granting Shirley Farner a 43.75 percent community property interest in the military retirement pay of her ex-husband, Lyle Farner. Shirley sought and obtained a writ of execution for her share of Lyle’s retirement pay from the date of their separation to the date on which Shirley began receiving her share directly from the United States Air Force. (*Id.* at p. 1373.) Lyle appealed from the denial of his motion to quash the writ of execution, arguing the original order granting Shirley a percentage interest in his retirement pay was not a money judgment, and no writ of execution could issue to enforce it. (*Id.* at pp. 1372-1373.) The appellate court

concluded, “the aspect of the judgment affording Mrs. Farner a retroactive right to a portion of Mr. Farner’s retirement pay in substance is a money judgment.” (*Id.* at p. 1374.)

The 1985 judgment does not specify the dollar amount Lee was to pay to Susan. However, that amount can be ascertained in the same way the courts did in *Brown v. Brown* and *In re Marriage of Farner*. The method of calculation is set forth in the 1985 judgment. However, based on the limited factual record before us and the issues actually briefed by the parties, we cannot determine the amount, if any, that Susan is owed. In its simplest form, the 1985 judgment awards Susan half the proceeds “upon sale of the residence,” less the costs of sale, and less \$30,000 for the preexisting encumbrance on the residence, plus a \$3,695 equalizing payment from Lee to Susan. The sales price of the residence and the costs of sale can be calculated, and simple math then applied to ascertain the amount to which Susan was entitled. The amount of the 1985 judgment was reasonably ascertainable, and the trial court erred in refusing to determine the amount, if any, of Susan’s community property interest.

We also note that the same questions about calculation would arise even if the residence had been sold “forthwith” in 1985. A mathematical calculation would still be required even at that time. To hold that an amount is not ascertainable would make this judgment illusory.

Bonner v. Superior Court (1976) 63 Cal.App.3d 156, on which Susan also relies, supports our conclusion that the trial court could have determined the amount, if any, of Susan’s interest. Ethel Bonner and James Bonner owned real property as joint tenants, on which they filed a homestead declaration. (*Id.* at p. 158.) When Ethel and James divorced, the trial court awarded the real property to Ethel, and ordered her to make an equalizing payment of \$5,000 to James for his share of the community property; the payment was to be made when Ethel remarried or sold the property, but no later than three years after the date of the order dividing the parties’ community property. (*Id.* at

p. 159.) James applied for a writ of execution after Ethel failed to make the equalizing payment for more than five years after the court ordered the division of the property. (*Ibid.*) The appellate court concluded the trial court retained jurisdiction to make further orders necessary to effectuate its judgment, including the power to direct a sale of the homesteaded property: “The court’s power to direct a sale of the homesteaded community property was not, moreover, exhausted by its disposition of the matter in the interlocutory judgment. That decree clearly indicated the court’s intent that [James] receive \$5,000 ‘as and for his community interest in the said real property.’ [James] was not thereby converted to a mere creditor. Failure of [Ethel] to sell the property within three years as the judgment contemplated, or otherwise arrange for [James] to receive his share, justified the court in making a further order to prevent frustration of the intended division. If no such further order were made and the property remained in [Ethel]’s hands exempt from execution, the net result would be to award virtually all the community property to [Ethel]. [¶] To the extent that a judgment of dissolution is not self-executing in respect of any division of property therein ordered, the court retains jurisdiction to make such further orders as are appropriate to compel obedience to its judgment.” (*Id.* at p. 165.)

On remand, the trial court shall conduct an evidentiary hearing, and consider such testimony and documentary evidence as is necessary to determine, among other things, the date on which the value of the property is to be calculated. If the trial court concludes the property shall be valued as of the date of the judgment of dissolution, it shall, in addition to calculating Susan’s community property interest, also calculate the net present value of that interest. If the trial court concludes the property should be valued as of the date Lee sold the property in 2006, it shall make the necessary calculations to decide what credits and offsets, if any, may apply to the 2006 value of the property. In either case, the trial court shall fully consider all legal and equitable

arguments affecting the parties' respective interests in the property and the enforceability of the judgment.

We note that counsel for the parties participated in a lively oral argument before this court, and responded to this court's questions regarding many of the issues mentioned, *ante*. Nothing said during that argument should be viewed as a concession by any party, nor may it otherwise limit or impair the parties' rights to raise any legal or equitable arguments in the trial court. In addition, nothing said by any of the justices in the course of oral argument shall be considered as an opinion of this court or of any justice; our opinion is solely expressed herein.

DISPOSITION

The postjudgment order is reversed, and the matter is remanded to the trial court with directions as set forth herein. Appellant to recover costs on appeal.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.